



**The Malad
Chamber of
Tax
Consultants**



**Price ₹ 5/-
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MCTC Bulletin

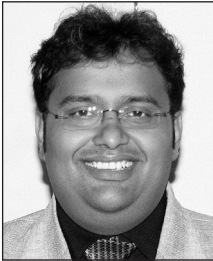
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September, 2012



President's Communiqué



Dear Members,

First of all A Very Happy Ganesh Chaturthi and Micchami Dukkadam to all of you.

With your co-operation our 10th RRC to Dudhsagar Resort & Spa was a grand success. It was a very adventurous RRC with a visit to Dudhsagar waterfalls which is one of the biggest waterfall of India. Friends I am very thankful to Shri J. D. Nankani sir for accepting our invitation and inaugurating our 10th RRC. I am also thankful to Shri Pravinbhai Shah our Guest of Honour at 10th RRC with whose blessings and innovative idea we have completed 10 successive years of Residential Refresher course in Malad Chamber Family. I am also thankful to Paperwriters Shri Janak Waghani and Shri Dharmen Shah for delivering an very exhaustive talks on the topic. For young paperwriter I can say only that he has scored a century in his maiden attempt to write a paper.

Our Second Study Circle on the topic Intricate Issues in Revised Schedule VI was also very successful as large number of participants attended the meeting and were benefited by the knowledge of learned speaker Shri Harish Motiwalla.

In the month of November we are having Diwali Get-together& Saraswati Sanman Samarambh in which we will be awarding Dr. Bharat D. Vasani Saraswati Sanman Trophies to the children of MCTC member for outstanding performance in passing exams of SSC/HSC with 75% marks & above & students who cleared post graduation professional exams like CA., C.S., C.W.A., MBBS, MBA, Engineers.

We are conducting a workshop on Sales Tax and Service Tax starting from 6th December, 2012, it will be on every alternate 1st and 3rd Saturdays jointly with STPAM, CTC, BCA and AIFTP. Interested members are requested to enroll immediately to avoid disappointment.

In this month we have not kept any Study Circle Meetings as this is a very hectic month for all of us. Lastly I wish all of you all the best and Happy Working.

With warm regards

Sachin Gandhi
President

For Query & Submission of forms for Membership/Seminar please contact any of the following Office Bearers

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DIRECT TAX UPDATE

By CA Haresh P. Kenia

□ DTAA OF INDIA WITH JERSEY {208 TAXMANN 108 (ST.)}

Notification No. 26/2012 [F. No. 503/06/2008-FTD-I] dated 10/07/2012

The Central Government has notified that all the provisions of Agreement between the Government of Republic of India and the Government of Jersey for the exchange of information and assistance in collection with respect to taxes shall be given effect to in Union of India w.e.f. 8th day of May, 2012.

□ EXEMPTION OF SALARIED EMPLOYEES FROM REQUIREMENT OF FILING OF RETURNS FOR ASSESSMENT YEAR 2012-13 {208 TAXMANN 118(ST.)}

Press Release [No. 402/92/20006-MC (15 of 2012)] dated 20/07/2012

CBDT *vide* its Notification No 9/2012 dated 17th February, 2012 has exempted salaried employees from the requirement of filing the returns for A.Y. 2012-13. The exemption is applicable only if **all** the following conditions are fulfilled:—

1. Employee has earned only salary income and income from savings bank account and annual interest earned from savings bank account is less than ₹ 10 thousand;
2. The total income of the employee does not exceed ₹ 5 Lakhs (Total Income means gross total income less deductions under Chapter VI-A);
3. The employee has reported his PAN to the employer;
4. Employee has reported his income from interest on savings bank account to employer;
5. Employee has received Form 16 from his employer;
6. Total tax liability of the employee has been paid off by the employer by way of TDS and the employer has deposited TDS with Central Government;
7. Employee has no refund claim;
8. Employee has received salary only from one employer;
9. Employee has not received any notice from Income Tax Department for filing of Income-tax return.

□ DTAA OF INDIA WITH ESTONIA {208 TAXMANN 119 (ST.)}

Notification No. 27/2012 [F.No.503/02/1997-FTD-I] dated 25/07/2012

The Central Government has notified that all the provisions of Agreement between the Government of the Republic of India and the Government of the Republic of Estonia for the Avoidance of Double Taxation and Prevention of Fiscal Evasion shall be given effect to in Union of India w.e.f. 1st day of April, 2013.

□ DTAA OF INDIA WITH LITHUANIA {208 TAXMANN 140 (ST.)}

Notification No. 28/2012 [F.No.503/02/1997-FTD-I] dated 25/07/2012

The Central Government has notified that all the provisions of Agreement between the Government of the Republic of India and the Government of the Republic of Lithuania for the Avoidance of Double Taxation and Prevention of Fiscal Evasion shall be given effect to in Union of India w.e.f. 1st day of April, 2013.

□ INCOME TAX (EIGHTH AMENDMENT) RULES, 2012 – SUBSTITUTION OF FORM ITR-7 {208 TAXMANN 162 (ST.)}

Notification No. 29/2012 [F.No.142/31/2011-TPL] / SO 1705(E) dated 26/07/2012

ITR-7 for the Assessment Year 2012-13 has been notified.

□ SECTION 119 – ORDER EXTENDING DUE DATE FOR FILING INCOME TAX RETURNS FOR A.Y. 2012-13 {208 TAXMANN 197 (ST.)}

Order [F.No. 225/163/2012/IT(A.II)] dated 31/07/2012

On consideration of the reports of disturbance of general life caused due to failure of power and further in consideration of the fact that the e-filing of returns for a specified category of individuals and HUF has been made mandatory, the CBDT has extended the due date of filing of returns of income for the assessment





year 2012-13 to 31st August, 2102 in respect of assessees who are liable to file such returns by 31st July, 2012 as per provisions of section 139 of Income-tax Act, 1961.

□ **CBDT'S CLARIFICATION ON EXTENSION OF DUE DATE OF FILING OF RETURNS FOR ASSESSMENT YEAR 2012-13 {208 TAXMANN 197(ST.)}**

Press Release [No. 402/92/20006-MC (20 of 2012)] dated 01/08/2012

A section of Media has reported that the CBDT has extended 'due date' of filing of returns to 31st August, 2012 in respect of only those returns which were to be e-filed by 31st July, 2102. It is clarified that the notification issued by the Board on 31st July, 2012 has extended the 'due date' of filing of all returns for the AY 2012-13 which were due to be filed by 31st July, 2012 to 31st August, 2012.

□ **SECTION 139 – RETURN OF INCOME – RELAXATION FROM COMPULSORY E-FILING OF RETURN OF INCOME FOR AY 2012-13 FOR REPRESENTATIVE ASSESSEES OF NON-RESIDENTS AND IN CASE OF PRIVATE DISCRETIONARY TRUSTS {208 TAXMANN 200 (ST.)}**

Circular No. 6/2012 [F.No. 133/44/2012-SO (TPL)] dated 03/08/2012

Rule 12 of the Income Tax Rules, 1962 mandates that an Individual or Hindu Undivided Family, if his or its total income or the total income in respect of which he is or it is assessable under the Act, during the previous year, exceeds ten lakh rupees, shall furnish the return electronically for the A.Y. 2012-13 and subsequent assessment years.

- It has been brought to the notice of Board that the agents of non-residents within the meaning of section 160(1)(i) of the Income-tax Act, are facing difficulties in electronically furnishing the returns of non-residents. This is because there may be more than one agent of the non-resident in India for different transactions or a person in India may be an agent of more than one non-resident. Such situations are not covered by the existing e-filing software which functions on the principle of one assessee-one PAN-one return.
- It has also been brought to the notice of the Board that 'private discretionary trusts' having total income exceeding ten lakh rupees are facing problems in filing their return of income electronically in cases where they are filing their return in the status of an "Individual". This is because status of private discretionary trust has been held in law as that of an "Individual". The existing e-filing software does not accept the return of a private discretionary trust in the status of an "Individual".

Accordingly, it has been decided by the Board that:—

- ✓ It will not be mandatory for agents of non-residents, within the meaning of section 160(1)(i) of the Income-tax Act, if his or its total income exceeds ten lakh rupees, to electronically furnish the return of income of non-residents for A.Y. 2012-13.
 - ✓ It will not be mandatory for 'private discretionary trusts', if its total income exceeds ten lakh rupees, to electronically furnish the return of income for A.Y. 2012-13.
- **SECTION 37(1) OF THE INCOME-TAX ACT, 1961–BUSINESS EXPENDITURE–INADMISSIBILITY OF EXPENSES INCURRED IN PROVIDING FREEBIES TO MEDICAL PRACTITIONER BY PHARMACEUTICAL AND ALLIED HEALTH SECTOR INDUSTRY {208 TAXMANN 201 (ST.)}**

Circular No. 5/2012 [F.No. 225/142/2012-ITA.II] dated 01/08/2012

It has been brought to the notice of the Board that some pharmaceutical and allied health sector Industries are providing freebies to medical practitioners and their professional associations in violation of the regulations issued by the Medical Council of India which is regulatory body constituted under Medical Council Act, 1956. The Medical Council of India in exercise of its statutory powers amended the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 on 10-12-2009 imposing a prohibition on the medical practitioner and their professional associations from taking any Gift, Travel facility, Hospitality, Cash or monetary grant from pharmaceutical and allied health sector Industries. Explanation appended to Section 37(1) of Income-tax Act, denies claim of any such expense, if the same has been incurred for a purpose which is either an offence or prohibited by law. Thus, the claim of any expenses incurred in providing above-mentioned or similar freebies in violation of provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 shall be inadmissible under section 37(1) being an expense prohibited by the law. This disallowance shall be made in the hands of such





pharmaceutical or allied health sector Industries or other assessee which has provided aforesaid freebies and claimed it as a deductible expense in its accounts against income. It is also clarified that income equivalent to value of freebies enjoyed by the aforesaid medical practitioner or professional association is also taxable as business income or income from other sources as the case may be depending on the facts of each case.

□ **DTAA OF INDIA WITH GUERNSEY {208 TAXMANN 212 (ST.)}**

Notification No. 30/2012 [F.No.503/01/2009-FTD-I] dated 09/08/2012

The Central Government has notified that all the provisions of Agreement between the Government of Republic of India and the States of Guernsey for the exchange of information with respect to taxes shall be given effect to in Union of India w.e.f. 11th day of June, 2012.

RECENT JUDGEMENT UNDER SERVICE TAX

By CA Sunny H. Kachalia

1. CENVAT credit can be claimed for the period prior to registration:

Facts: The appellant M/s mPortal India Wireless Solutions P. Ltd. was engaged in development and export of software and registered as an STPI unit. Since the services were exported, appellants were claiming exemption from Service Tax. While providing services, appellants have availed CENVAT credit on various input services which remained unutilized and accordingly a claim for refund of Service Tax was filed. The claim was rejected by the adjudicating authorities on several grounds and one of the grounds for rejection was that the appellant was not registered under Service Tax at the time of claiming credit.

Held: There is no statutory provision in CENVAT Credit Rules, 2004 which imposes restriction on availing credit prior to registration under Service Tax. In absence of statutory provision which prescribes that registration is mandatory and if registration is not made the appellant cannot claim the credit should not be taken as a ground for rejection of refund claim filed by the appellant. Accordingly CENVAT credit can be claimed for the period prior to obtaining registration.

mPortal India Wireless Solutions P. Ltd. vs. CST, Bengaluru (2012 (27) STR 134 Kar.)

2. CENVAT credit can be claimed on group medical insurance policy

Facts: Appellant claimed credit of Service Tax paid on group medical insurance policy which was mandatory to be opted by the companies for its employees as per Section 38 of Employees State Insurance Act, 1948. The credit was denied on the ground that the same is not a specified service on which credit can be claimed.

Held: Service Tax can be claimed on all those services which have been utilized by the assessee directly or indirectly in or in relation to manufacture of final product. Employee mediclaim insurance is a welfare measure and it is a statutory obligation of the assessee to follow. Since it is a statutory expense to be incurred by the company and it is in relation to business, CENVAT credit on the same can be claimed by the assessee. *CCE, LTU, Bengaluru vs. Micro Labs Ltd. (2012 26 STR 383 Kar.)*

FORTHCOMING EVENT

NOVEMBER, 2012

Along with Diwali Get-together we have Saraswati Sanman Samarambh in which we will be awarding Dr. Bharat D. Vasani Saraswati Sanman Trophies to the children of MCTC members for outstanding performance in passing exams of SSC/HSC with 75% marks & Above & Students who cleared post graduation professional exams like CA, C.S., C.W.A., MBBS, MBA, Engineers. All members are requested to send the certified marks sheets to any of the office bearers of the Chamber before 31st October, 2012. In case if any query members can please contact Shri Sachin Gandhi, President on 9821482020.

Details required :—

Member's Full Name, Email Id, Mob. No., Student's Full Name, Gender, Age, Name Of Exam Cleared, Year of Exam, Percentage, Name of School / College / Institution





TENTATIVE SCHEDULE OF JOINT WORKSHOPS AND TOPICS

JOINT WORKSHOP ON MVAT & ALLIED LAWS Jointly with B.C.A., C.I.T.C., AIFTP & MCTC

YEAR 2012-13

Venue : STPAM Library, 104, Vikrikar Bhavan , Mazgaon , Mumbai-400 010

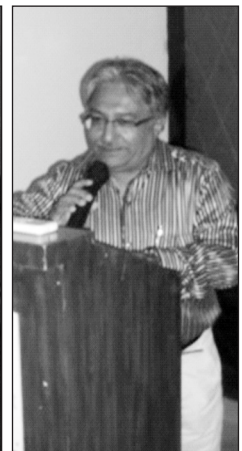
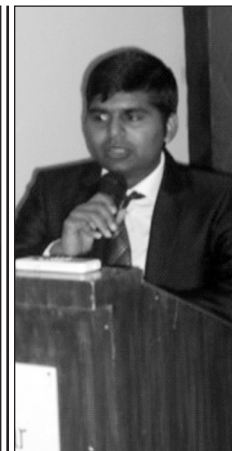
Time : 2.30 to 5.30 P. M.

TENTATIVE LIST

Sr. No.	DATE	DAY	SUBJECT
1	06.12.2012	Thursday	Taxation of Builders & Developers under MVAT & Service Tax
2	15.12.2012	3rd Saturday	Taxation of Intangible Goods & Leasing Transactions under MVAT CST & Service Tax
3	29.12.2012	5th Saturday	Issues in Branch Transfer & Sales in transit under CST Act
4	05.01.2013	1st Saturday	Issues in Works Contract Transactions under MVAT & Service Tax
5	19.01.2013	3rd Saturday	Taxation of Hoteliers, Caterers, Franchise Agreements under MVAT, Luxury Tax & Service Tax
	Service Tax		
6	02.02.2013	1st Saturday	Issues in Definition of Service, Exempt & Declared Services
7	16.02.2013	3rd Saturday	Issues in Valuation of services, Abatement & Reverse Charge Mechanism
8	02.03.2013	1st Saturday	Issues in Place of Provision of Service Rules, 2012
9	16.03.2013	3rd Saturday	Issues in Point of Taxation Rules, 2011
10	30.03.2013	5th Saturday	Issues in CENVAT Credit Rules, 2004

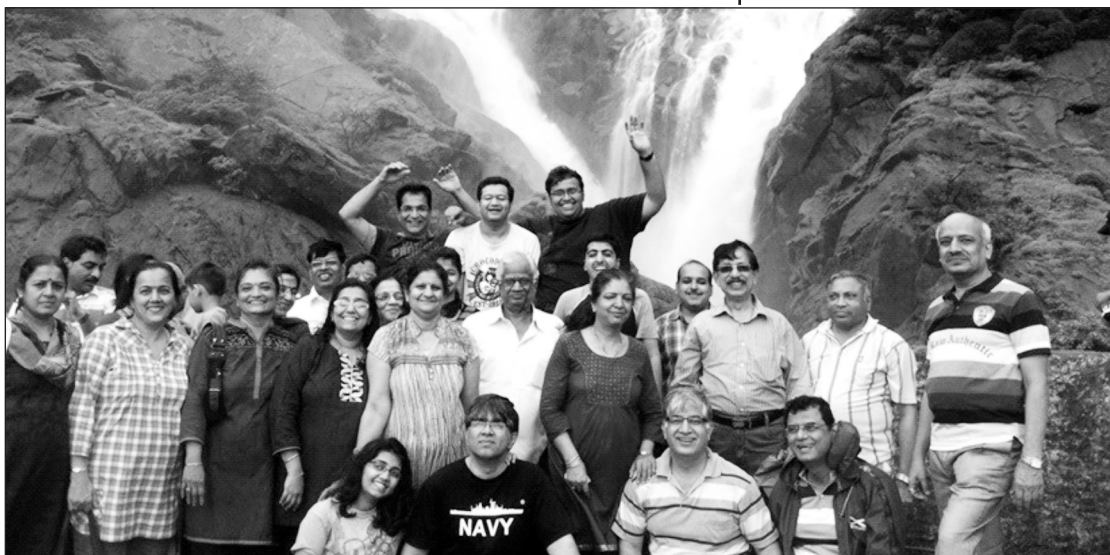
All the above lectures shall be given by eminent speakers who are experts in their respective fields. The enrollment for the above workshops is approx ₹ 1,500/- which shall be confirmed in due course. For Enrollment Members are requested to please contact the following persons.

Sachin R. Gandhi	President	9821482020
Vishal J. Shah	Vice President	9869147065
Kishor J. Hapani	Hon. Treasurer	9820438125
Vipul M. Somaiya	Hon. Secretaries	9223418790
Jayprakash M. Tiwari	Hon. Secretaries	9820496297



Chief Guest Shri J. D. Nankani Inaugurating 10th RRC at Dudhsagar Resort & Spa, Goa. Also Seen In Picture From L To R : Convenor Shri Raj Shah, President Shri Sachin Gandhi and Guest of Honour Shri Pravin R. Shah

Paperwriters Shri Dharmen Shah and Shri Janak Waghani at 10th RRC at Dudhsagar Resort & Spa, Goa.



Group Photo of Delegates at 10Th RRC at Dudhsagar Resort and Spa Jointly with The Sales Tax Practitioners Association of Maharashtra

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